

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 792 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FARUKI SAIYAD KAYUMUDDIN SARIFUDDIN

Versus

DISTRICT MAGISTRATE

Appearance:

MS SUBHADRA G PATEL for Petitioner
Mr.R.M.Chauhan, GOVERNMENT PLEADER for Respondent No.
1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 21/1/98 passed by the District Magistrate, Patan under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

There are as many as four prohibition cases registered against the petitioner, which are pending trial in the court as can be seen from the grounds of detention. Besides this, the detaining authority has also placed reliance on the statements of six witnesses who were beaten by the petitioner on public road and whose identity has not been disclosed while claiming privilege under Section 9(2) of the Act. The witness No.1 in his statement dated 27/11/97 has stated that two months prior to the said date, he was beaten by the petitioner by stating as to why he has come to his area. Not only that the petitioner had also taken out Rs.150/and some other important papers from the pocket of the witness. Witness No.2 in his statement dated 27-11-97 has stated that 12 days prior to the said date the witness was beaten on the ground that why he has entered his area. The witness was further informed that if at all the witness wants to enter his area he should bring some customers of the liquor. Similarly witness No.3 in his statement 27/11/97 has stated that he was beaten when the witness refused to give him lift to Unjha town. However, the witness was required to go to Unjha as the petitioner has shown open knife to him. Not only that the petitioner did not pay the amount of fare also. The witness No.4 is concerned, witness was beaten when the witness demanded the amount of tea consumed by the petitioner and his associates. The witness No.5 is was a rickshaw driver who was beaten on the ground that he was refused to take the petitioner to Golapur village. Not only that but Rs.60/- were also taken out by the petitioner from the pocket of the witness. Witness No.6 was beaten because he refused to load two barrels of liquor in his rickshaw. Not only that but the amount of fare was also not paid by the petitioner. In view of this material the detaining authority has recorded a finding that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary to detain him.

Having gone through the allegation and the statements of witnesses, assuming the allegations made against the petitioner are accepted as true the same not amount to breach of public order and the same at best can be construed as the breach of law and order situation. From the statements of witnesses it is clear that nobody has stated that people gathered when they were beaten and on atmosphere of fear and terror was created and the even

tempo of life was disturbed. In absence of this, the subjective satisfaction derived by the detaining authority that the activity of the petitioner is prejudicial to the maintenance of public order does not appear to be well founded.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witness are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 21/1/98 is quashed and set aside. the detenu Faruki Saiyad Kayumuddin Sarifuddin is ordered to be released forthwith if not required in connection with any other offence. rule is made absolute to the aforesaid extend with no order as to costs.
